Supreme Court, U.S.
FILED
SEP 13 1995
CLERK

No. 95-66

In the Supreme Court of the United States

OCTOBER TERM, 1995

LINCOLN NATIONAL LIFE INSURANCE COMPANY and
EMPLOYERS HEALTH INSURANCE COMPANY,

PETITIONERS,

v.

ALLEN L. HARDESTER, JR. and BARBARA HARDESTER,

RESPONDENTS.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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PETITIONERS' REPLY BRIEF

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and Employers Health Insurance Company, Petitioners,

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PETITIONERS' REPLY BRIEF

Respondents argue that, because this action is "fact-specific," the petition for a writ of certiorari should be denied. (Brief in Opp., p. 9). In support of this argument, respondents cite to arguments made by petitioners in opposition to respondents' motion in the district court for attorney's fees. (*Id.*) Respondents fail to disclose, however, that the district court expressly rejected the argument now advanced by respondents. The district court, awarding respondents' attorney's fees, found this "argument to be unpersuasive." Indeed, the district court stated that

> Lincoln National chose to interpret its policy language and the facts in the medical record against Mrs. Hardester in an unduly narrow manner. Other

> insurers should be encouraged to act with greater breadth of vision.

(App., *infra*, 2a).

Respondents further argue that the instant petition should be denied because petitioners argued in opposition to respondents' motion for attorney's fees that the case did not "raise or resolve any significant legal questions regarding ERISA." (Brief in Opp., p. 10). Once again, respondents fail to disclose that the district court rejected this argument, holding that this case "had substantial precedential value."[1] (App., *infra*, 3a). The district court opined that this action had precedential value because it "involved the interpretation of standard policy language." (*Id.*)

The reasons advanced by respondents as grounds for this Court to deny review already have been rejected by the district court. Respondents cannot benefit from the explicit findings of the district court for purposes of their claim for attorney's fees, and then reject those same findings for purposes of opposing the petition.

The petition filed in this action involves the interpretation of standard plan language that covers thousands of individuals nationwide. (Petition, pp. 7-8; Brief of the Health Insurance Assn. of Am. as Amicus Curiae, p. 2). Respondents admit as much when they assert that this matter involved "contract interpretation." (Brief in Opp., p. 12). The "contract" to which respondents refer is part of an ERISA plan in force in numerous jurisdictions. Resolution of the question presented has significance to all of the persons covered by this plan, as

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[1] Respondents likewise represented to the district court that this case "represents very significant case law." (Plaintiffs' supplemental motion for attorney's fees, pp. 2-3).

well as all other plan participants covered by substantially similar plan provisions. The petition for a writ of certiorari should be granted.

Respectfully submitted,

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**Counsel of Record*

September 8, 1995

UNPUBLISHED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ALLEN L. HARDESTER, JR., et al.	*	
	*	
v.	*	Civil No. JFM-93-1685
	*	
LINCOLN NATIONAL LIFE INSURANCE COMPANY, et al.	*	

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MEMORANDUM

Plaintiffs, having ultimately prevailed in this case after the Fourth Circuit, sitting *en banc*, affirmed the judgment that I entered in favor of plaintiffs, have now filed a motion seeking the award of attorneys' fees in the amount of $59,758.72 and court costs in the amount of $646.00. Defendants have not challenged the reasonableness of the amount of fees and costs requested but contend that fees and costs should not be awarded at all.

The Fourth Circuit has outlined five factors that are to be considered in determining whether attorneys' fees should be awarded in an ERISA case:

(1) degree of opposing parties' culpability or bad faith;

(2) ability of opposing parties to satisfy an award of attorneys' fees;

(3) whether an award of attorneys' fees against the opposing parties would deter other persons acting under similar circumstances;

(4) whether the parties requesting attorneys' fees sought to benefit all participants and beneficiaries of an ERISA plan or to resolve a significant legal question regarding ERISA itself; and

(5) the relative merits of the parties' positions.

Reinking v. Philadelphia American Life Ins. Co., 910 F.2d, 1210, 1217-18 (4th Cir. 1990); *Quesinberry v. Life Ins. Co. of North America*, 987 F.2d 1017, 1029 (4th Cir. 1993).

In exercising my discretion as to whether to award fees here, my evaluation of the five factors is as follows:

1. Bad Faith - In light of the fact that six judges of the Fourth Circuit agreed with defendants' position, I do not find that defendants acted in bad faith.

2. Ability to Pay - Defendants do not deny that they have the ability to pay plaintiffs' fees and costs.

3. Deterrence - Defendants argue that awarding fees against them would not help deter other insurers acting under similar circumstances because this case turned on its own particular facts. I find that argument to be unpersuasive. Almost every decision as to whether to pay benefits turns upon the claimant's particular medical history and condition. Here, Lincoln National choose [sic] to interpret its policy language and the facts in the medical record against Mrs. Hardester in an unduly narrow manner. Other insurers should be encouraged to act with a greater breadth of vision. By the same token, the failure to award fees would have deleterious effects. Undoubtedly, if fees were not awarded, in future cases insurers and their counsel would attempt to prevent claims from being filed, or at least to settle them at a very low value, by advising plaintiffs and their counsel that even if the plaintiffs were to prevail, their victory would be pyrrhic in

light of the amount of attorneys' fees they would have to incur in order to obtain it.

4. Precedential Value - Although this case (like almost all cases) did turn on its own facts, it had substantial precedential value. It involved the interpretation of the standard policy language. Further, it involved at its foundation the fairness of construing ambiguous language concerning pre-existing conditions to prohibit a claim by a beneficiary who had no knowledge of that pre-existing condition. In the future, at least in the Fourth Circuit, if insurers intend to deny benefits to a person who has no knowledge when she obtains coverage that she suffers from a condition that will require treatment after the coverage becomes effective, they will have to say so clearly and expressly.

5. Relative Merits - Although the defendants' argument was persuasive to some of the Fourth Circuit, ultimately the plaintiffs were found to be correct.

Having found that four of the five factors weigh in favor of plaintiffs, I will grant them attorneys' fees and costs in the amount requested, which I have considered and find reasonable.

A separate order effecting the ruling made in this memorandum is being entered herewith.

Date: June 12, 1995

J. Frederick Motz
United States District Court